

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.101

RSA No. 4203 of 2017 (O&M)
Date of Decision: 13.12.2022

Balwant Singh and another

.... Appellants

Versus

Vikram Singh (since deceased) through his LRs
and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. R.L.Sharma, Advocate
for the appellants.

Mr. Rajeev K.Kapila, Advocate
for the caveator-respondent No.10.

TRIBHUVAN DAHIYA, J. (ORAL)

This is plaintiffs' second appeal against the concurrent findings
of both the Courts below.

2. The facts of the case in brief are, the appellants/plaintiffs
(hereinafter referred to as the 'plaintiffs') filed a suit for declaration claiming
that they, along with defendants No. 1 to 3, were owners in possession of the
suit land measuring 5 *kanal* 14 *marla*, out of the land measuring 111 *kanal*
19 *marla*, from the recorded share of Jai Devi, widow of Munshi Ram, in
addition to their share already recorded in *jamabandi* for the year 1987-88,
as detailed in the plaint.

3. The suit was contested by defendants No. 10 to 12 pleading that
after the death of Jai Devi, her successor-in-interest Gurmit Singh (defendant

No. 10) sold about 25 *kanal* 18 *marla* of land to one Adarsh Kumar, son of Raghubant Singh who had not been impleaded as party. Therefore, the suit was bad for non-joinder of necessary parties. It was further pleaded that respondent/defendant No.11 was owner in possession of her land purchased, vide registered sale deed dated 21.09.1985, and she was *bona fide* purchaser for valuable consideration. After Jai Devi's death, Gurmit Singh, respondent/defendant No.10 further sold 12 *marla* of land to defendant No.11, vide registered sale deed dated 21.09.1985, which was within plaintiffs' knowledge. It was further pleaded that Jai Devi had executed a Will dated 02.11.1988 in favour of respondent/defendant No.10 which was registered on 03.11.1988 and mutation No.5006 was also sanctioned on that basis. Therefore, defendant No.10 became owner in possession, and alienated some portion of suit property in favour of respondent/defendant No.11, who raised four walls and constructed a gate over it. No Will was executed by Jai Devi in plaintiffs' favour, and the alleged Will dated 12.08.1960 is a result of fraud to deprive defendants of their rights. Plaintiffs and defendants No.1 to 3 had no right, title or interest in the suit property.

4. Learned counsel for the parties have been heard.

5. The suit was dismissed by the trial Court, and the lower appellate Court affirmed the same. Both the Courts below have concurrently held that execution of the first Will dated 12.08.1960 (Ex.P1) by Jai Devi in favour of plaintiffs and defendants No.1 to 3 has been duly proved on record by the plaintiffs, with the help of testimony of PW-2, Sansar Singh, Lambardar, who identified signatures of his father Maan Singh on the Will. Undisputedly, Maan Singh and other attested witnesses have died. At the same time, it has been held that second Will executed by Jai Devi dated 02.11.1988 (Ex.D1) in favour of respondent/defendant No. 10 also stood

duly proved on record. One of the attesting witnesses to the Will, Partap Singh, DW-4, has been examined who has proved its execution by Jai Devi. This Will was registered on 03.11.1988, as Registrar was not available on 02.11.1988. The factum of registration has also been proved by the registry clerk Tilak Raj, DW-6. No evidence could be led by the plaintiffs to prove that the subsequent Will was not thumb marked by Jai Devi. There is no evidence on record to substantiate the plaintiffs' contentions that Jai Devi was not in a sound disposing mind at the time of the execution of the Will. After execution of the second Will by Jai Devi in favour of the respondent/defendant No. 10, mutation was also sanctioned in his favour. It has also come in evidence that she used to reside with respondent/defendant No. 10, who was also appointed as her attorney to look after her estate.

6. As per settled proposition of law, a subsequent Will, if duly proved on record, renders the earlier Wills redundant automatically. As all previous Wills are deemed to have been cancelled even in the absence of any specific clause to that effect in the subsequent Will. The last testamentary disposition operates to the exclusion of all previous ones, which are inconsistent with and contrary to it. Therefore, there is no basis for the plaintiffs to claim any right over the suit property on the basis of the first Will (Ex.P1).

7. Besides, respondent/defendant No.11 has been held to be a *bona fide* purchaser on the basis of sale deed dated 21.09.1985 with respect to 12 *marla* of land she purchased from respondent/defendant No.10.

8. Learned counsel for the appellants could not point out any error in the findings recorded by the Courts below. No substantial question of law arises for consideration either.

- 9. Appeal stands dismissed.
- 10. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

13.12.2022
Maninder

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No